



Entered on Docket
April 07, 2009

Hon. Bruce A. Markell
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	
)	BK-S-08-20843-BAM
NORMA JEAN SATTIEWHITE,)	
)	Chapter 7
Debtor.)	
)	Date: March 10, 2009,
)	March 31, 2009
)	Time: 2:30 p.m.,
)	4:00 p.m.
)	Courtroom: 3

OPINION AFTER HEARING

The court, on its own motion, ordered Amy C. Dziedzic to appear and show cause why the fees charged for bankruptcy petition preparation services were not unreasonable and why an injunction preventing Ms. Dziedzic from acting as a bankruptcy petition preparer should not be entered (dkt. #27). Ms. Dziedzic failed to appear at the March 10, 2009, hearing—in person, or through counsel. For reasons set forth below, the court continued the show cause hearing until March 31, 2009, and gave notice of the continuance to Ms. Dziedzic. Ms. Dziedzic again failed to appear.

1. Order to Disgorge Fees

Section 110 (h)(3)(A) provides:

The court shall disallow and order the immediate turnover to the bankruptcy trustee any fee . . . found to be in excess of the value of any services—(i) rendered by the bankruptcy petition preparer during the 12-month period immediately preceding the date of the filing of the petition.

The Office of the United States Trustee promulgates guidelines regarding the conduct

1 and compensation of bankruptcy petition preparers (“BPP”) in this district and has set a
 2 presumptively reasonable maximum fee for a chapter 7 case at \$150.00.¹ In this case, however, Ms.
 3 Dziedzic charged the debtor \$500.00. Ms. Dziedzic’s justification for her excessive fee stems from
 4 her mistaken belief that because the costs and fees associated with BPP services have risen since the
 5 guideline was promulgated, the guideline no longer reflects the reasonable value of her services.
 6 Ms. Dziedzic asserts that the guideline fee includes, and thus requires, a BPP to perform and pay for
 7 additional services such as document preparation, filing, photocopying, messenger services,
 8 postage, telephone, and notices, and that once these services are included, the \$150.00 fee is
 9 unreasonable. However, the guideline states that the total fee of \$150.00 is “for service fees and
 10 expenses including document preparation, filing, photocopying, messenger services, postage,
 11 telephone, and notices.” This guideline merely suggests that no more may be charged for these
 12 additional services, but it does not require that any of these services be performed—with the potential
 13 exception of creating one photocopy of the petition in order to comply with § 110(d), which
 14 requires a BPP to provide a copy of any filed document to the debtor.

15 In Ms. Dziedzic’s “Amended Disclosure of Compensation,” filed with the court on
 16 March 4, 2009, she offered two additional reasons for her \$500.00 fee (dkt. #35). First, the fee
 17 included 5.5 hours of the debtor’s computer usage time at \$0.40 per minute, and second, Ms.
 18 Dziedzic states that she provided Ms. Sattiewhite with three hours of bill organization services at
 19 \$30.00 per hour. The computer usage fee is unreasonable; a debtor may use any public library’s
 20 computer for free. Also, Ms. Dziedzic asserts that her rate of \$0.40 per minute for computer use
 21 beats the Kinko’s rate of \$1.15 per minute. Ms. Dziedzic is wrong. In Las Vegas, the court takes
 22 judicial notice that all FedEx/Kinko’s advertise that they charge \$0.20 per minute for internet use
 23 with the exception of its store located near the Convention Center that charges \$0.40 per minute.
 24 With regard to the bill organization services, Ms. Dziedzic has not provided the court with any

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 26 ¹See Office of the United States Trustee, *Guidelines for Petition Preparers in the District of Nevada*, www.usdoj.gov/ust/r17/Guidelines_BPP.pdf [hereinafter “Guidelines”].

1 information as to what was done in these three hours to justify a rate of \$30.00 per hour.

2 The court believes that Ms. Dziedzic's addition of computer usage charges and bill
3 organization fees are *ad hoc* maneuvers by Ms. Dziedzic in order to make her fees seem more
4 reasonable. However, even if \$132.00 for computer usage and \$90.00 for bill organization services
5 were deducted from the entire fee as separate allowable fees, Ms. Dziedzic's fee for BPP services
6 would be \$278.00, still well above the maximum fee allowed by the guidelines.

7 However, as the maximum fee is only a presumed reasonable fee, Ms. Dziedzic was
8 given the opportunity at the show cause hearings to carry the burden of proving that her fee
9 represented the value of her service. *See In re Woodward*, 314 B.R. 201, 205 (Bankr. N.D. Iowa
10 2004). Section 330 (a)(3)(A)-(F) provides the court with relevant factors that may be considered in
11 determining reasonable compensation for professionals other than BPPs, including such factors as
12 time spent on services, whether the fee is comparable to other similar practitioners, and the
13 complexity of the services.²

14 Under § 110(e)(2)(A) & (B), a BPP is prohibited from offering a debtor any legal
15 advice, and as such, a BPP may only perform the modest services of a typist. *In re Bush*, 275 B.R.
16 69, 84 (Bankr. D. Idaho 2002). Ms. Dziedzic's claim that her higher fee is reasonable because
17 bankruptcy documents today are more complex and lengthier than the document's existing when the
18 guideline was originally promulgated fails. While the complexity and lengths of the documents
19 may have changed, the BPP's role in the bankruptcy process is limited to typing into the documents
20 what the debtors have provided them. The enhanced complexity and length of the documents may
21 require debtors to expend additional time gathering and organizing information to ensure the
22 completeness and accuracy of their petitions and schedules, but the BPP is generally unaffected as
23 she can only "fill in the blanks."

24
25 ²Section 330(a)(3)(A)-(F) applies to compensation of professional person's employed by the
26 estate to administer the estate, the factors in this section are informative in determining the
reasonableness of a fee in conjunction with the services rendered.

1 In addition, Ms. Dziedzic choice to prepare bankruptcy petitions for prospective debtors
2 in the District of Nevada is such that it requires her to comply with the bankruptcy rules that govern
3 such filings. Ms. Dziedzic cannot make up her own rules and ignore local rules of this court.
4 Marshall v. Gates, 44 F.3d 722, 724-25 (9th Cir. 1995). Local Rule 9011(d) allows the U.S. trustee
5 to issue guidelines concerning bankruptcy petition preparers.³

6 The maximum fee for BPP services in a chapter 7 case is not the only guideline Ms.
7 Dziedzic has ignored. The guidelines require court approval prior to payment of any fee in excess
8 of the \$150.00 maximum and requires the BPP to provide notice of the guidelines to the debtor prior
9 to the BPP doing any work or receiving any compensation from the debtor. To ensure the BPP
10 complies with notice and informs the debtor of the fee maximum, the guidelines require the debtor
11 and BPP to sign a notice document and attach the signed original to the first document filed in the
12 case.

13 Ms. Dziedzic's answer to the show cause order and response to the U.S. trustee's
14 response failed to prove the reasonableness of her fee. In addition, her failure to appear at the March
15 10, 2009, and March 31, 2009, hearings support the court's finding that Ms. Dziedzic is unable to
16 prove that the fees charged represent the value of her services.

17 The court finds Ms. Dziedzic in violation of 11 U.S.C. § 110(h) and requires the
18 disgorgement of the entire fee paid in this matter, \$500.00, as ordered in the "Order of
19 Disgorgement and Permanent Injunction."

20 **2. Permanent Injunction**

21 Section 110(j) provides the court the power to enjoin a BPP from conduct in violation
22 of the Code or from further acting as a bankruptcy petition preparer. The pertinent language of
23 § 110(j) provides:

24
25 ³Local Rule 9011(d) states: "The United States trustee may issue guidelines in connection with
26 the provisions of 11 U.S.C. § 110 setting forth positions that the trustee will generally follow in
relation to petition preparers."

(1) A debtor for whom a bankruptcy petition preparer has prepared a document for filing, the trustee, a creditor, or the United States trustee in the district in which the bankruptcy petition preparer resides, has conducted business, or the United States trustee in any other district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

(2)(A) In an action under paragraph (1), if the court finds that—
 (i) a bankruptcy petition preparer has—
 (I) engaged in conduct in violation of this section or of any provision of this title; [or] . . .
 (III) engaged in any other fraudulent, unfair, or deceptive conduct; and

(ii) injunctive relief is appropriate to prevent the recurrence of such conduct, the court may enjoin the bankruptcy petition preparer from engaging in such conduct.

(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in subclause (I), (II), or (III) of clause (i) and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, has not paid a penalty imposed under this section, or failed to disgorge all fees ordered by the court, the court may enjoin the person from acting as a bankruptcy petition preparer.

Injunctive relief is an extraordinary remedy and implicates a bankruptcy petition preparer's opportunity to operate a business, therefore, all the requirements of notice and due process are required before an injunction may be issued. Section 110(j)(1) states that a civil action to enjoin a BPP may be initiated by the debtor, creditor, trustee, or U.S. trustee. The Ninth Circuit Bankruptcy Appellate Panel, however, has stated that § 105(a) permits a bankruptcy judge to raise the matter so long as the "bankruptcy petition preparer receives essentially the same procedural protections that would be afforded in an adversary proceeding."⁴ In re Graves, 279 B.R. 266, 272

⁴The court recognizes that some courts disagree with the Ninth Circuit B.A.P. and hold that a bankruptcy court may issue an injunction under § 110 (j) only in the context of an adversary proceeding initiated by a debtor, creditor, trustee, or U.S. trustee. See Fulton v. McVay, 318 B.R. 546, 554 (D. Colo. 2004).

1 (9th Cir. B.A.P. 2002). The order to show cause provided adequate notice to Ms. Dziedzic that the
2 court was considering whether injunctive relief was appropriate under the circumstances (dkt. #
3 27). In this hearing, Ms. Dziedzic was given the opportunity to answer and respond to the order,
4 appear at the hearing and present evidence in support of her position, as well as discovery abilities
5 such as subpoena powers. At the hearing, the U.S. trustee assumed the role of the entity seeking the
6 injunction. Ms. Dziedzic was provided with notice and an opportunity for a hearing, therefore, she
7 received all necessary procedural protections.

8 The court finds two grounds upon which injunctive relief is appropriate: (1) Ms.
9 Dziedzic has before, and continues to, charge fees in excess of the maximum fee set by the U.S.
10 trustee, and (2) Ms. Dziedzic has engaged in fraudulent, unfair, or deceptive conduct.

11 Ms. Dziedzic argues that because the U.S. Supreme Court and the Judicial Conference
12 of the United States have not prescribed any guidelines setting a maximum allowable fee
13 chargeable by a BPP that she may charge what she believes is reasonable. This is not so. Local
14 Rule 9011(d) is applicable and requires BPPs to follow the guidelines promulgated by the U.S.
15 trustee.⁵ In this case, Ms. Dziedzic has violated these guidelines as she charged a fee in excess of
16 the \$150.00 maximum. Ms. Dziedzic cannot offer a reasonable explanation why her exorbitant fee
17 is not in excess of the value of her services. The charging of excessive fees is not new to Ms.
18 Dziedzic as this court has previously ordered her to disgorge her fees in an unrelated case.⁶ In
19 addition, at the hearing on this matter the U.S. trustee has established a pattern of Ms. Dziedzic
20 charging excessive compensation for her services. The U.S. trustee submitted receipts into
21 evidence bearing Ms. Dziedzic's signature that show that she received compensation in amounts
22 ranging from \$425.00 to \$550.00 for BPP services in numerous chapter 7 and chapter 13 cases.⁷

24 ⁵Local bankruptcy rules, such as LR 9011, are authorized by FED. R. BANKR. P. 9029.

25 ⁶In re Henry, Ch. 7 Case No. 08-20287, dkt. #36.

26 ⁷The proffered receipts, signed by Ms. Dziedzic, can be treated as the written assertions of Ms. Dziedzic herself and are therefore admissible under FED. R. EVID. 801(d)(2)(a) as an admission by a

1 Ms. Dziedzic's continued violation of the U.S. trustee's maximum fee guideline
2 constitutes grounds for injunctive relief to prevent a subsequent violation.

3 Secondly, Ms. Dziedzic has engaged in conduct that is fraudulent, unfair, and
4 deceptive. The Bankruptcy Appellate Panel for the Ninth Circuit has held that when a BPP fails to
5 sign a debtor's bankruptcy petition as required by § 110(b) & (c), or to file the declarations as
6 required by § 110(h), this amounts to making "false statements to the court and intentionally
7 conceal[ing] their involvement as BPPs, which is fraudulent, unfair, and deceptive conduct." In re
8 Reynoso, 315 B.R. 544, 553 (9th Cir B.A.P. 2004). A BPP is required to make these declarations

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10 party opponent. U.S. v. Williams, 837 F.2d 1009, 1013-14 (11th Cir. 1988) (receipts which bore the
11 initials of the defendant himself are admissible as an admission of the defendant himself under FED.
12 R. EVID. 801(d)(2)(a)). The signatures on the receipts have been compared to Ms. Dziedzic's known
13 signature from her numerous court filings and the similarity of the signatures is sufficient.

14 In the alternative, the receipts are excepted from hearsay under the residual exception of FED.
15 R. EVID. 807 as they have equivalent circumstantial guarantees of trustworthiness. Ms. Dziedzic failed
16 to attend the show cause hearing, and in the process avoided being questioned regarding the fees she
17 has charged in connection with BPP services. Other than the testimony of every past client of Ms.
18 Dziedzic, these receipts are material and more probative on the point for which they are offered as they
19 show the very nature of what is being proved, that she charged amounts listed on each receipt for BPP
20 services. Ms. Dziedzic's failure to appear was willful, therefore, she should not be able to benefit from
21 her willful conduct. Had the U.S. trustee had the opportunity to question Ms. Dziedzic, the receipts
22 could have been excluded from hearsay under the business records exception in FED. R. EVID. 803(6)
23 as they are records regularly kept by Ms. Dziedzic in her ordinary course of business.

24 In addition, the receipts presented by the U.S. trustee have many similarities so as to provide
25 this court with additional circumstantial guarantees of trustworthiness, such as all coming from the
26 same receipt book, formatted in similar fashion, and the amounts which Ms. Dziedzic admits to
accepting from certain clients in her court filings match the amounts on some of the receipts for those
same clients.

The notice requirement of FED. R. EVID. 807 was not met as the U.S. trustee did not notify Ms.
Dziedzic that he would be introducing the receipts into evidence. However, in the U.S. trustee's brief
to the court regarding Ms. Dziedzic's show cause hearing, the U.S. trustee mentions at fn.17 eight
separate cases where the trustee states that "there is evidence of excessive fees charged." Each case
is named separately, and the amount charged is listed. Ms. Dziedzic was given notice that the U.S.
trustee would be presenting evidence to prove she took specific amounts of money from these named
clients. In addition, Ms. Dziedzic's willful failure to appear at the show cause hearing makes the
notice requirement a moot point. The purpose of the notice requirement is to give a party an
opportunity to prepare to defend against the evidence that will be presented against them at trial. Ms.
Dziedzic willfully chose to not attend the hearing, and was therefore not prejudiced by the introduction
of these receipts without her prior notice.

1 under penalty of perjury to ensure that debtors are aware of the limited services a BPP may provide
 2 them and to ensure that debtors are not paying excessive fees for essentially typing services. Ms.
 3 Dzedzic has, on repeated occasions, received compensation for BPP services performed, yet she
 4 has failed to sign and file the required declarations on the debtor's petitions and schedules.

5 The receipts offered by the U.S. trustee confirm that Ms. Dzedzic charged and received
 6 compensation for BPP services in numerous cases, including In re Delora, Ch. 13 No. 09-11029, In
 7 re Pearl, Ch. 7 No. 08-21719, In re Salquero, Ch. 7 No. 08-24645, and In re Marchis, Ch. 7 No. 08-
 8 23406, but her name does not appear in any of the filed documents in those cases. Ms. Dzedzic
 9 stated in her response to the U.S. trustee response to the order to show cause, that she has no
 10 knowledge of the above listed cases. Ms. Dzedzic has intentionally concealed her involvement as
 11 a BPP in the above cases by failing to sign and file the required declarations. As such, Ms.
 12 Dzedzic's conduct was unfair and deceptive under Reynoso and is grounds for injunctive relief to
 13 prevent subsequent violations of this type.

14 While injunctions preventing Ms. Dzedzic from charging excessive fees and requiring
 15 compliance with the declaration requirements of § 110 (b), (c), & (h) may prevent Ms. Dzedzic
 16 from such conduct in the future, the court does not believe that these injunctions will be sufficient
 17 to prevent Ms. Dzedzic from interfering in the proper administration of the Code in this District.
 18 Ms. Dzedzic's violations of the Code go beyond charging excessive fees and concealing her role as
 19 a BPP. On three separate occasions, Ms. Dzedzic has willfully refused to appear at her show cause
 20 hearings even though ordered by the court to do so.⁸ Mr. Dzedzic has also failed to comply with
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22
 23 ⁸See In re Henry, Ch. 7 No. 08-20287, dkt. #14 ("Order For to Show Cause Why Amy C.
 24 Dzedzic Should Not be Found in Violation of 11 U.S.C. § 110(h), Required to Turn Over Excess Fees
 25 Charged, Found in Violation of Federal Rule of Bankruptcy Procedure 9011"); In re Sattiewhite, Ch.
 26 7 No. 08-20843, dkt. #27 ("Order For to Show Cause Why Amy C. Dzedzic Should Not be Found in
 Violation of 11 U.S.C. § 110(h), Required to Turn Over Excess Fees Charged, Found in Violation of
 Federal Rule of Bankruptcy Procedure 9011, and Why an Injunction Preventing Ms. Dzedzic from
 Acting as Bankruptcy Petition Preparer Should Not Be Entered"); In re Sattiewhite, Ch. 7 No. 08-
 20843, dkt. #38 ("Order Continuing Order to Show Cause").

1 the court's order requiring Ms. Dziedzic to disgorge all fees in the Henry matter.⁹ Due to the
 2 continuing and extreme nature of Ms. Dziedzic's behavior, an injunction against Ms. Dziedzic from
 3 further acting as a bankruptcy petition preparer is appropriate as an injunction prohibiting specific
 4 conduct will not be sufficient to prevent her interference with the proper administration of the
 5 Bankruptcy Code.

6 When issuing an injunction against a BPP from further acting as a petition preparer,
 7 courts have regularly modified the formal requirements of other types of injunctive relief.¹⁰ In their
 8 place, courts have routinely issued injunctions based on the continuous and egregious nature of the
 9 BPP's conduct alone. *See e.g., In re Bernales*, 345 B.R. 206, 228-29 (Bankr. C.D. Cal. 2006); *In re*
 10 *Howard*, 351 B.R. 371, 383 (Bankr. W.D. La 2005). Ms. Dziedzic's total lack of remorse or
 11 contrition in her actions, as well as her continued defiance of bankruptcy rules and court orders,
 12 makes injunctive relief the only practical means of preventing Ms. Dziedzic from her blatant and
 13 continued interference in the proper administration of the Code in this District. Therefore, the court
 14 permanently enjoins Ms. Dziedzic from acting as a bankruptcy petition preparer in this district as
 15 ordered in the "Order of Disgorgement and Permanent Injunction."

17 ⁹*In re Henry*, Ch. 7 No. 08-20287, dkt. #36 ("Order Finding Amy C. Dziedzic in Violation of
 18 11 U.S.C. § 110(h), and Requiring Disgorgement of Fees). Ms. Dziedzic raised the issue of inadequate
 19 notice regarding this disgorgement order. While the court believes that Ms. Dziedzic did have actual
 20 notice of the disgorgement order as she is known to frequently check PACER, the court wanted to
 21 ensure adequate notice to Ms. Dziedzic and had the order resent on March 11, 2009, to various known
 22 addresses of Ms. Dziedzic (dkt. #43). The court gave Ms. Dziedzic an additional two weeks to comply
 23 with the disgorgement order, however Ms. Dziedzic has admitted that she has not complied with the
 24 order. On March 30, 2009, Ms. Dziedzic filed with the court an "Ex Parte Motion for Reconsideration
 25 Based on Newly Discovered Evidence" stating that she had returned \$200.00 to Mr. Henry. (*In re*
 26 *Henry*, Ch. 7 No. 08-20287, dkt. #46.) While generous of Ms. Dziedzic to return money to a needy
 debtor, she has not complied with the court's order to disgorge the entire fee of \$450.00 and pay the
 money over to trustee Lisowski.

¹⁰Injunctive relief is appropriate only upon the establishment of a violation of the Code by the
 BPP, a showing that harm is likely to occur if an injunction is not issued, upon a balancing of the
 equities where the injury that will be suffered by the public in allowing the BPP to continue to operate
 in that capacity is greater than the damage the injunction will cause to the BPP, and last, the injunction
 is in the public interest. *See Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 374, 381 (2008).

1 IT IS SO ORDERED.

2 Copies sent to:

3 U.S. TRUSTEE - LV - 7
4 USTPRegion17.LV.ECF@usdoj.gov

5 WILLIAM A LEONARD
6 biff7tte@mindspring.com, ca46@ecfbis.com

7 AMY C. DZIEDZIC
8 4067 PLEASANT RD
9 LAS VEGAS, NV 89108

10 AMY C. DZIEDZIC
11 912 N. JONES BLVD
12 LAS VEGAS, NV 89108

13 AMY C. DZIEDZIC
14 840 S. RANCHO DR., STE.4-234
15 LAS VEGAS, NV 89106

16 NORMA JEAN SATTIEWHITE
17 915 H STREET
18 LAS VEGAS, NV 89106

19 AUGUST B. LANDIS
20 300 LAS VEGAS BLVD. S., #4300
21 LAS VEGAS, NV 89101

22 ###
23
24
25
26